

**VIRGINIA BOARD OF NURSING  
MINUTES  
March 16, 2010**

**TIME AND PLACE:** The meeting of the Board of Nursing was called to order at 9:00 A.M. on March 16, 2010 in Board Room 2, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

**PRESIDING:** Patricia M. Selig, R.N., F.N.P., Ph.D., President

**BOARD MEMBERS PRESENT:**

Florence Jones-Clarke, R.N., M.S., Vice President (joined later)  
Evelyn Lindsay, L.P.N., Secretary  
Lynne Cooper, Citizen Member  
Peregrin C. Francisco, R.N., M.S.A.,  
Joyce A. Hahn, Ph.D.; APRN; NEA-BC  
Brenda L. Hale, R.N.  
John M. Horn, L.P.N.  
Patricia C. Lane, R.N., B.S.N., M.B.A., H.C.A. (joined later)  
Judith E. Piersall, R.N., B.S.N.  
William Traynham, L.P.N.

**BOARD MEMBER ABSENT:**

Jeanne E. Holmes, Citizen Member  
Karen K. Schultz, Ph.D., M.B.A, Citizen Member

**STAFF PRESENT:**

Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director  
Jodi P. Power, R.N., J.D., Deputy Executive Director  
Brenda Krohn, R.N., M.S., Deputy Executive Director  
Paula B. Saxby, R.N., Ph.D., Deputy Executive Director  
Jessica Ressler, R.N.C., M.S.N., Nursing Education Consultant  
Ann Tiller, Compliance Manager  
Jane Elliott, R.N., Ph.D., Discipline Staff  
Amy Davis, Executive Assistant

**STAFF ABSENT:**

Gloria D. Mitchell, R.N., M.S.N., M.B.A., Deputy Executive Director  
Linda Kleiner, R.N., Discipline Case Manager

**OTHERS PRESENT:**

Howard M. Casway, Senior Assistant Attorney General  
Elaine Yeatts, Policy Analyst, Department of Health Professions  
Lauren Goodloe, Virginia Nurses Association representative  
Nina Beaman, Program Director for Nursing, Bryant and Stratton College  
Susan Motley, President, Virginia Nurses Association  
Michele Satterlund, VCNP (joined later)

**ESTABLISHMENT OF  
A QUORUM:**

With nine members of the Board present, a quorum was established.

## ANNOUNCEMENTS:

- Ms. Douglas stated the Committee of the Joint Boards of Nursing and Medicine business meeting scheduled for April 14, 2010 may be cancelled due to a lack of business, however the formal hearings scheduled that day will be held. Ms. Douglas asked Board members that may be available to serve on the panel of the Board of Nursing to inform her or Ms. Davis.
- Ms. Lindsay is being honored at a VCU Medical Center Shining Knight Gala on Saturday, March 20, 2010.

ORDERING OF AGENDA: The agenda was reviewed and ordered.

CONSENT AGENDA: The Board removed three items from the proposed consent agenda. Ms. Cooper moved to accept the consent agenda which includes:

### Minutes:

January 27, 2010 – Quorum – Ms. Cooper

January 27, 2010 – Panel – Ms. Cooper

January 27, 2010 – Panel – Dr. Selig

January 28, 2010 – Panel – Ms. Cooper

February 9, 2010 – Telephone Conference Call – Ms. Jones-Clarke

February 19, 2010 – Panel – Ms. Cooper

### Reports:

Finance Report

Health Practitioners Monitoring Program Report of Statistics

Agency Subordinate Tracking Log

Dr. Hahn moved to accept the minutes of January 25, 2010 and January 26, 2010 as corrected. The motion was seconded and carried unanimously.

## REPORTS:

### **Executive Director Report:**

- Ms. Cooper provided positive comments regarding Board staff being able to accomplish so much with limited resources.
- Ms. Douglas provided information on the Data Integrity Project being led by Ms. Tiller. One temporary employee is working under the direction of Ms. Tiller to identify and correct several thousands of Virginia Board of Nursing records missing data in the NURSIS system. Additional temporary staff will be added as needed and as funding from NCSBN is available.
- Ms. Douglas noted Ms. Ryals will not be present today but currently remains Director of DHP. No announcement for replacement has been made at this time. Newly appointed Secretary of Health and Human Resources, Dr. William Hazel plans to visit DHP for orientation of the agency on March 24, 2010.
- Ms. Douglas informed Board members that the first phase of online application process has begun for RN and PN exam and endorsement applications. More than 200 applicants have used this process thus far. The online application process allows applicants to register online, provide basic demographic information and pay the application fee with a credit

card; however a paper application is still required to be mailed to the Board. The process allows applicants to check the status of their application online benefiting the applicant and Board staff. Communication regarding the online process is being developed which will be sent to nursing education programs in Virginia and included in the next publication of *Virginia Nurses Today*.

Ms. Jones-Clarke and Ms. Lane joined the meeting.

**DHP Key Performance Issues:**

Ms. Douglas reviewed the performance measurements for Q2 2010. In Q2 2010, the clearance rate was 87%, the pending caseload older than 250 business days was 9% and the percent closed within 250 business days was 93% for the Board of Nursing. The clearance rate for Nursing was 97%, the pending caseload older than 250 business days was 6%, and the percent closed within 250 business days was 92%. The clearance rate for Nurse Aide was 70%, the pending caseload older than 250 business days was 16% and the percent closed within 250 business days was 95%.

Ms. Douglas commented that collective work is evident in discipline processing and that Virginia is in a good place given the recent media attention regarding boards of nursing nationwide. Ms. Lane added that positive comments regarding Virginia and the strong leadership of Ms. Douglas were made at the NCSBN Mid-year meeting.

**Massage Therapy Advisory Board:**

Ms. Krohn reported on the meeting of the Massage Therapy Advisory Board held March 1, 2010. The Advisory Board worked on developing FAQ's for massage therapy and made the following recommendations for the Board to consider:

- Amending Guidance Document 90-55 (include title) to include certified massage therapists in the title. Ms. Krohn also recommended to include registered medication aides in the introduction.
- Developing a guidance document to address common massage therapy issues that may include definitions and types of massage; appropriate draping; using the title of massage therapist; and that county/city requirements in addition to Board of Nursing regulations. Ms. Douglas will consult with Board counsel regarding definitions to ensure the definition in the law is not altered.
- Not allowing the NCBTMB exam to be offered in Spanish in Virginia to be consistent with other occupations regulated by the Board of Nursing and only allowing exams to be given in English.

Ms. Hale moved that the Board accept all recommendations of the Advisory Board. The motion was seconded and carried unanimously.

Ms. Krohn and Ms. Douglas noted that Joseph Schibner, Chair of the Advisory Board participated in informal conferences in February 2010 that included massage therapy cases. Ms. Hale added that it was very helpful to have the expertise of a massage therapist as a part of the Informal Conference Committee.

### **Statistical Information of Non-Routine Applications:**

Ms. Power provided a report regarding non-routine applications received by the Board of Nursing in calendar year 2009. The total number of applications received with cause for denial was 1276. Ms. Power reviewed the number and percentage of applications received indicating criminal convictions, prior actions in Virginia or other states, and impairment issues. The report also included a breakdown of reported convictions by license type/occupation, noting the most common conviction reported was for drug related offenses, and certified nurse aides report the highest percentage of all convictions. Resolution following review of non-routine applications was discussed, noting 78% of non routine applicants are approved following paper review with the remainder requiring a proceeding or alternative disposition.

Ms. Douglas noted tracking of this information was begun in anticipation of criminal background check legislation which Virginia thus far has been unable to successfully implement. Ms. Douglas added that criminal background check requirement is the main issue that keeps other states from joining the Nurse Licensure Compact, and that Virginia is not in compliance with NLC core licensure requirements along with three other states. She added the Executive Director for NCSBN will be communicating directly with Governors of each state that does not have the criminal background check legislation in place. Ms. Yeatts indicated if the Board wishes to submit criminal background check legislation for the 2011 General Assembly, it should be considered at the May 2010 Board of Nursing meeting. The anticipated problem will be the cost associated with implementing criminal background checks especially when fee increases are currently being proposed.

RECESS: The Board recessed at 10:05 A.M.

RECONVENTION: The Board reconvened at 10:25 A.M.

### **Board of Health Professions:**

Ms. Lane reported on the Board of Health Professions meeting held February 9, 2010. Due to inclement weather, a quorum was not present at the meeting to conduct business. Ms. Lane reported a public hearing is scheduled for March 30, 2010 considering the regulation of surgical assistants and surgical technologists. Ms. Lane was assigned to the Discipline Committee of the Board of Health Professions. The next Board of Health Professions meeting is scheduled for May 4, 2010.

POLICY FORUM:

### **Sanction Reference Guidelines Program:**

Neal Kauder, VisualResearch, Inc. provided an update on the Sanction Reference Program that included an update and evaluation of the current process and new initiatives underway. Mr. Kauder is in the process of meeting with all Boards to update the program and will provide a full evaluation to determine the efficacy and goals that were initially established in 2004.

Mr. Kauder reviewed the statistics gathered monthly regarding Board of Nursing compliance and departure rates. He reported 839 sanction reference worksheets for the Board of Nursing were completed with an 82% agreement

rate. 153 cases (143 nursing; 10 nurse aide) were identified as departures from the guidelines, noting the Board tends to increase sanctions when departing from the guidelines. Reasons for increased sanction included did not appear at informal conference, did not participate in the investigation, admission of substance abuse, demeanor or actions at the informal conference and extent of Board or criminal history. Reasons for decreased sanctions included single incident, corrective action, no patient involvement, age of case, and testimony at the informal conference.

Results of an effectiveness study being conducted will include an evaluation of methodology, goals and primary outcomes. However, a need for additional training regarding sanction reference worksheets has been identified already to assure improvement in completeness, accuracy and consistency in procedures used. Mr. Kauder offered additional training sessions for Board members and staff and Ms. Douglas requested training to be provided at the Board meeting scheduled for May 18, 2010. Additional discussion included consideration of using sanction reference guidelines in formal hearings and pre-hearing consent orders.

OPEN FORUM: No one was present to address the Board.

REPORTS: **NCSBN Mid-Year Meeting:**  
Ms. Lane and Ms. Power attended the NCSBN Mid-year meeting and reported on the meeting held March 8 – 10, 2010 in Chicago. Pioneering the Path for Public Protection was the theme. Committee reports included Transition to Practice; Uniform Licensure requirements; Leadership Succession and Continued Competence. Budget constraints were a common discussion issue for Boards of nursing nationwide.

EDUCATION: **Request for Accommodation to take the NCLEX-PN:**

**Taja Crowley, NCLEX-PN Applicant**  
Ms. Crowley did not appear.

CLOSED MEETING: Ms. Lindsay moved that the Board of Nursing convene a closed meeting pursuant to Section 2.2-3711(A)(7) of the *Code of Virginia* at 12:01 P.M. for consultation with the provision of legal advice by the Assistant Attorney General in the matter an accommodation request. Additionally, Ms. Lindsay moved that Ms. Douglas, Ms. Power, Ms. Krohn, Dr. Saxby, Ms. Ressler, Dr. Elliott, Ms. Tiller, Ms. Davis and Mr. Casway attend the closed meeting because their presence in the closed meeting is deemed necessary and their presence will aid the Board in its deliberations.  
The motion was seconded and carried unanimously.

RECONVENTION: The Board reconvened in open session at 12:20 P.M.

Ms. Lindsay moved that the Board of Nursing certify that it heard, discussed or considered only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such

public business matters as were identified in the motion by which the closed meeting was convened.

The motion was seconded and carried unanimously.

**ACTION:**

Ms. Lane moved to schedule Taja Crowley for an Informal Conference to determine her ability to practice safely. The motion was seconded and carried. Ms. Lindsay, Ms. Cooper, Ms. Francisco, Dr. Hahn, Mr. Horn, Ms. Lane and Ms. Piersall were in favor of the motion. Dr. Selig, Ms. Hale and Mr. Traynham opposed the motion. Ms. Jones-Clark abstained.

Ms. Piersall requested Ms. Crowley's clinical instructors be asked to attend the informal conference to provide information.

Dr. Elliott left the meeting.

**RECESS:**

The Board recessed at 12:25 P.M.

**RECONVENTION:**

The Board reconvened at 1:10 P.M.

**LEGISLATION/REGULATION:**

**Regulatory Action Status:**

Ms. Yeatts reviewed the status of regulatory actions in process. The proposed action to increase fees and the NOIRA regarding nursing education program requirements are both in the Secretary's office. Ms. Yeatts anticipated action soon since the General Assembly has concluded.

**2010 General Assembly Update:**

Ms. Yeatts reviewed the status of bills from the 2010 General Assembly that may be of interest to the Board.

- HB 253 - Registered and practical nurse licensure requirements regarding military corpsmen training was left in Committee.
- HB 662 – Health professions disciplinary actions – this DHP sponsored bill has passed and will accomplish four things including:
  - allowing boards to accept surrender of a license in lieu of disciplinary action
  - allowing panels to consider agency subordinate recommendations for more efficient case disposition
  - allowing Virginia state law to compact with Nurse Licensure Compact rules and consider reinstatement with single state license for an individual previously suspended or revoked in another Compact state but now residing in Virginia
  - expanding the basis for §54.1-2409 mandatory suspension to include suspension/revocation in jurisdictions outside the U.S. and surrender of licensure in another state.
- HB 1376 – Board of Nursing to revise guidelines on seizure management for those with epilepsy (students). This bill has passed and will require the Board of Nursing to revise guidelines for seizure management in coordination with Board of Medicine guidelines which must be finalized by August 1, 2010. Ms. Yeatts suggested the Board consider creating an Ad Hoc Committee to work on this revision. Ms.

Douglas asked for at least three Board members interested to participate and suggested that school nurse, Tia Campbell, be involved with the process. Ms. Lane, Mr. Horn and Mr. Traynham volunteered to be on the Committee.

- HJ 90 – DHP to study advisability of permitting use of medication aides in nursing homes with its work to be complete by November 30, 2010 in advance of the 2011 General Assembly.

**NOIRA – Regulations Governing the Practice of Nursing, Requirements for Evidence of Continued Competency:**

Ms. Yeatts reviewed the proposed NOIRA and background of the Board of Nursing's and national work studying the issue of competency assessment for continuation of licensure. The Board has concluded that there should be evidence of continued competency for renewal of a nursing license but does not intend to rely solely on the continued competency model. The goal is to engage the nurse in a continuum of learning and renewal of knowledge and skills through a variety of practical and didactic experiences. Ms. Hale moved to adopt the NOIRA to initiate regulatory action regarding continued competence as stated. The motion was seconded and carried unanimously.

Ms. Douglas reported a continued competency conference conducted jointly by the Board of Nursing and the Virginia Nurses Association is scheduled for September 18, 2010. A representative from NCSBN may be invited to speak to provide a national perspective. The Physical Therapy model, to include a Practice Review Tool, was discussed as a viable option for demonstrating continued competence.

**EDUCATION:**

**Education Issues:**

- Dr. Saxby reported 8 nursing education programs have NCLEX pass rates below 80% for two consecutive years. Visits are being made to these programs; results will be presented to the Board at the July 2010 Education Special Conference Committee. This includes seven practical nursing education programs and one registered nursing (BSN) education program. If programs have a NCLEX pass rate below 80% for three consecutive years, the Board has the authority to withdraw program approval, pursuant to 18VAC90-20-151 of the Board of Nursing regulations.
- Ms. Ressler reported information from a recent Education Consultant conference call that nursing education programs nationwide are being pushed to retain students, even if they are failing, with concerns for moving along incompetent nursing students
- Ms. Ressler discussed refresher course requirements for nurses reentering the profession in various states. It is often difficult to find instructors and preceptors for the refresher programs too. Some states may require the nurse to pass the NCLEX in order to return to work.
- New nursing graduates in some geographic areas are finding it difficult to find employment. Some institutions, such as magnet institutions, require 85% of nurses have a BSN. Many already licensed nurses are being encouraged to obtain a BSN degree. Ms. Douglas added clarification that "BSN in 10" movement is not driven by or endorsed

by the Virginia Board of Nursing, although an article in Virginia Nurses Today may easily be interpreted that way.

**Education Special Conference Committee Minutes:**

Ms. Piersall reported on items of interest from the meeting held March 2, 2010, including recommendations of the Education Special Conference Committee to withdraw provisional approval of several practical nursing education programs for issues of falsification, quality issues and insufficient clinical sites. Ms. Francisco moved to accept the minutes and recommendations of the Education Special Conference Committee as submitted. The motion was seconded and carried unanimously.

Ms. Jones-Clarke inquired about the DHP Workforce Data Center assistance in obtaining data regarding the need for nursing education programs and nurses in certain geographic areas. It was noted that a market analysis would be helpful and may be appropriately considered during the NOIRA process for regulatory changes related to nursing education programs currently in process.

**OTHER MATTERS:**

**Discussion of Administrative Proceeding Process:**

Dr. Selig encouraged Board members to be as efficient as possible with informal conferences and formal hearings. Dr. Selig indicated being prepared, being on time, and being attentive to questions already asked will assist in the overall result of being respectful of everyone's time and efficient case resolution.

Mr. Casway discussed the audio-visual equipment being used for Board members to develop proposed findings of fact and conclusions of law process during formal hearings has been helpful. Mr. Casway suggested the same process may be beneficial during deliberations for informal conferences. Ms. Douglas reminded Board members and staff the need to ensure findings of fact and conclusions of law contain sufficient detail to fully support the sanction.

**Status of Appeals:**

Mr. Casway provided the following update on the status of pending appeals of Board of Nursing discipline case decisions which included:

- American International Institute of Health (AIHH) Practical Nursing Education Program in Arlington County Circuit Court. AIHH sought an injunction to stay the decision of the Board to deny full approval and to withdraw provisional approval. On February 4, 2010, their request for a stay was denied and the Board of Nursing decision was upheld. There has been no appeal filed in court.
- Alfon Maristela, LPN in Roanoke City Circuit Court. His license was indefinitely suspended by the Board. The appeal hearing was scheduled for February 23, 2010, but has been rescheduled for April 20, 2010 due to Board counsel illness in February.

**RECESS:**

The Board recessed at 2:20 P.M.

**RECONVENTION:**

The Board reconvened at 2:30 P.M.

**NLN Annual Survey of Nursing Schools Data Review:**



Dr. Saxby reviewed the results of the above report that included information related to tackling challenges related to the nursing education workforce and nursing education capacity. Recent additions to the report included unused educational capacity, constraints on expanding admissions, faculty vacancies and recruitment, and the impact of faculty shortages on education capacity. One item of interest Dr. Saxby pointed out was the report indicated 39% of qualified applications were turned away from pre-licensure programs in 2008; however this reported result did not account for persons that may have applied to and were turned away from other nursing education programs.

**Medication Aide Issues:**

Ms. Krohn reported on medication aide issues as contained the memos dated March 16, 2010 including:

- The use of flexpens by registered medical aides to administer insulin to residents in assisted living facilities;
- The 20 hours of supervised clinical experience that is part of the 68 hour medication aide training curriculum.

Board staff recommended a workgroup of two Board members along with Board staff be convened to study these issues and the possibility of developing a guidance document. Dr. Selig and Ms. Lindsay volunteered to serve on the workgroup. A meeting date will be determined.

**Healthcare Workforce Data Center:**

Ms. Douglas reported on the first meeting regarding workforce data collection for nurse practitioners held on March 15, 2010. Final study results are now posted on the DHP website and the work is moving toward other professions. It was reported the designated funding for the Data Center is almost exhausted, future funding for continued workforce data collection will come from licensees' fees.

**Board of Nursing Staffing Issues:**

Ms. Douglas reported the Board of Nursing currently has three vacancies in administrative support staffing. She was advised today that hiring freeze was instituted so those positions in process of being filled are now on hold. She noted those vacancies will negatively impact the processing of disciplinary caseload.

Dr. Saxby and Ms. Ressler left the meeting.

**CONSIDERATION OF CONSENT ORDERS AND AGENCY SUBORDINATE RECOMMENDATIONS REGARDING APPLICANTS:**

**CLOSED MEETING:**

Ms. Lindsay moved that the Board of Nursing convene a closed meeting pursuant to Section 2.2-3711(A)(27) of the *Code of Virginia* at 2:40 P.M. for the purpose of deliberation to reach a decision regarding consideration of consent orders and agency subordinate recommendations regarding applicants. Additionally, Ms. Lindsay moved that Ms. Douglas, Ms. Power, Ms. Krohn,

Ms. Tiller, Ms. Davis and Mr. Casway attend the closed meeting because their presence in the closed meeting is deemed necessary and their presence will aid the Board in its deliberations.

The motion was seconded and carried unanimously.

**RECONVENTION:**

The Board reconvened in open session at 2:55 P.M.

Ms. Lindsay moved that the Board of Nursing certify that it heard, discussed or considered only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion by which the closed meeting was convened.

The motion was seconded and carried unanimously.

**Jason Braman, LPN, 0002-077506**

Ms. Lane moved to accept the consent order for the voluntary surrender for indefinite suspension of the practical nursing license of Jason Braman. The motion was seconded and carried unanimously.

**Iris Stamper, Maryland RN license R075655**

Dr. Hahn moved to accept the consent order for the voluntary surrender for indefinite suspension of the Iris Stamper's multistate privilege to practice professional nursing in Virginia. The motion was seconded and carried unanimously.

**David W. Slusher, CNA, 1401-053296; LPN 0002-052621**

Ms. Lindsay moved to accept the consent order for the voluntary surrender for indefinite suspension of the practical nursing license of David Slusher and indefinitely suspend the right to renew the nurse aide certificate of David Slusher. The motion was seconded and carried unanimously.

**Natalie A. Capallia, LPN 0002-067777**

Ms. Lindsay moved to accept the consent order for the voluntary surrender for indefinite suspension of the practical nursing license of Natalie Capallia. The motion was seconded and carried unanimously.

**Michele Dobson, RN 0001-171350**

Ms. Lane moved to accept the consent order for the voluntary surrender for indefinite suspension of the professional nursing license of Michele Dobson. The motion was seconded and carried unanimously.

**Charles Parker, CNA 1401-127871**

Dr. Hahn moved to accept the consent order for the voluntary surrender for indefinite suspension of the nurse aide certificate of Charles Parker. The motion was seconded and carried unanimously.

**Julie Cruz-Sanchez, RN 0001-170372; CMT 0019-004886**

Ms. Francisco moved to accept the consent order to indefinitely suspend the massage therapy certificate of Julie Cruz-Sanchez. The motion was seconded and carried unanimously.

**Revina A. Payette, RN 0001-167200**

Ms. Lindsay moved to accept the consent order for the voluntary surrender for indefinite suspension of the professional nursing license of Revina Payette. The motion was seconded and carried unanimously.

**Kendra Davis, LPN 0002-045846**

Ms. Lane moved to accept the consent order for the voluntary surrender for indefinite suspension of the right to renew the practical nursing license of Kendra Davis. The motion was seconded and carried unanimously.

**Michelle Bryant, LPN 0002-072261**

Ms. Lane moved to accept the consent order to indefinite suspend the practical nursing license of Michelle Bryant. The motion was seconded and carried unanimously.

**Gwendolyn H. Brush, LPN 0002-016855**

Ms. Piersall moved to accept the consent order for the voluntary surrender for indefinite suspension of the practical nursing license of Gwendolyn Brush. The motion was seconded and carried unanimously.

**Tamya Brown, RN Applicant**

Ms. Piersall moved to accept the recommended decision of agency subordinate to approve the application of Tamya Brown for licensure as a professional nurse and to place Ms. Brown on probation to proceed concurrently with her probationary period as ordered by the Alabama Board of Nursing with terms and conditions. The motion was seconded and carried unanimously.

**ADJOURNMENT:**

As there was no additional business, the meeting was adjourned at 2:55 P.M.

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Evelyn Lindsay, L.P.N.  
Secretary

Note - Copies of reports referenced can be obtained by contacting the Board of Nursing office.